

ENVIRONMENTAL ASSESSMENT

PROPOSED RULE:

RELIGIOUS CEREMONIAL COLLECTION OF GOLDEN EAGLETS

IN WUPATKI NATIONAL MONUMENT

January 2001

NATIONAL PARK SERVICE

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PURPOSE AND NEED FOR THE ACTION

INTRODUCTION

The National Park Service (NPS) has issued a proposed rule (see Appendix A) to allow, under certain circumstances, the Hopi Tribe to collect golden eaglets (*Aquila chrysaetos*) from Wupatki National Monument for religious ceremonial purposes. This rule would authorize this activity upon terms and conditions sufficient to protect park resources against impairment, consistent with the Bald and Golden Eagle Protection Act.

Wupatki National Monument, a unit of the National Park System, is in north-central Arizona approximately 30 miles north of Flagstaff. The monument was established by Presidential Proclamation No. 1721 in December 1924, and currently comprises more than 35,400 acres. The proclamation setting aside the land as a National Monument notes that the area is set aside as a monument because of "...two groups of prehistoric ruins built by the ancestors of a most picturesque tribe of Indians still surviving in the United States, the Hopi, or People of Peace." The proclamation further notes that "the public interest would be promoted by reserving these prehistoric remains as a National Monument together with as much land as may be necessary for the proper protection thereof." (Proclamation No. 1721 of December 9, 1924). This proclamation, along with other applicable laws relating to the management of units of the national park system, govern the day to day administration of the monument.

BACKGROUND

In May 1999 members of the Hopi Tribe requested permission from the Superintendent of Wupatki National Monument to collect young golden eagles from nest sites in the monument for religious ceremonial purposes. The traditional Hopi ceremony involves collection of eaglets from golden eagle nests in May or June, raising of the birds to fledgling stage in the Hopi Village, when birds are sacrificed and the feathers used in a variety of subsequent religious ceremonies. The tribe held valid 1-year permits from the U.S. Fish and Wildlife Service and Arizona Game and Fish Department to collect golden eaglets at the time of their request to the National Park Service.

Golden eagles are not listed as federal threatened or endangered species, but are protected by federal law under the Bald and Golden Eagle Protection Act, and the Migratory Bird Treaty Act. Under authority of these acts, the Albuquerque office of the U.S. Fish and Wildlife Service issued a permit to the Hopi Tribe in March 1999, allowing collection of a maximum of 40 golden eagles (and an unlimited number of red-tailed hawks (*Buteo jamaicensis*)) in Coconino, Navajo, and Apache counties during the 1999 calendar year. In addition, the Arizona Game and Fish Department issued a permit to the Hopi Tribe in April 1999 allowing the collection of no more than 10 golden eagles and ten red-tailed hawks from federal or state lands in Arizona during 1999. Both permits require permission of the landowner for access and collection, and the observance of all other applicable state and federal laws.

Following consideration of the request of the Hopi Tribe, the National Park Service denied the request for a special use permit to collect golden eagles, based upon National Park Service regulations that prohibit taking wildlife in units of the national park system unless specifically permitted by law. The Department of the Interior's Assistant Secretary for Fish and Wildlife and Parks subsequently withdrew the National Park Service denial in order to allow for reconsideration of the issue. In October 1999 the tribe withdrew its request to collect eaglets from Wupatki National Monument.

PURPOSE AND NEED

The purpose of the proposed rule is to allow authorized members of the Hopi Tribe to collect golden eaglets from Wupatki National Monument for religious ceremonial purposes, under conditions protecting park resources from impairment. The importance of eagle gathering to the Hopi Tribe is articulated in Article IV of the Tribal Constitution, which states:

“The Tribal Council shall negotiate with the United States Government agencies concerned, and with other tribes and other persons concerned, in order to secure protection of the right of the Hopi Tribe to hunt for eagles in its traditional territories, and to secure adequate protection for its outlying, established shrines”

As described in the proposed rule, the practice of eagle gathering is integral to the Hopi religious ceremonial cycle and culture. The eagle serves as the link between the spiritual world and the physical world, a connection that embodies the essence of Hopi spirituality and belief. The cyclical relationship between the eagle and the Hopi Tribe is renewed annually through the practice of eagle gathering, sustaining the connection between the physical and spiritual worlds for the next generation of Hopi.

The proposed rule is needed because those clans of the Hopi Tribe whose traditional eaglet gathering area includes Wupatki National Monument are unable under existing National Park Service regulations to obtain a special use permit to collect golden eaglets in the monument. Only a few of the clans and religious societies of the Hopi Tribe bear the important ceremonial obligation of eagle gathering, and each has a traditional area from which it may exclusively gather eagles. Clan ownership of eagle nesting areas corresponds to the early settlement areas and migration routes of the clans before they arrived at their modern villages. The Hopi Tribe regards the eagles as embodying the spirits of their ancestors, and the clan areas often contain, or are very close to, Hopi clan ruins. The collection of golden eaglets from specific geographic areas is a fundamental part of Hopi religion, and there is an ancestral and historical connection between the Hopi Tribe and Wupatki National Monument. Anthropologists have described the Hopi's “famous nest at Wupatki” as an important area for traditional Hopi eagle gathering (Ellis n.d.).

Without the proposed rule, the National Park Service does not have the legal authority to issue such a special use permit. Allowing the collection of golden eaglets from within

Wupatki National Monument would violate existing National Park Service Regulations that expressly prohibit the taking of wildlife within units of the national park system, “except by authorized hunting and trapping...” Hunting and trapping are not statutorily authorized within Wupatki National Monument.

SCOPE OF THE ENVIRONMENTAL ASSESSMENT

This environmental assessment focuses exclusively on the potential effects of the proposed rule to allow authorized members of the Hopi Tribe to collect golden eaglets from Wupatki National Monument under terms and conditions specified by the National Park Service to prevent impairment of park resources. Any other similar requests received in the future to allow collection of resources in other national park system units by Indian tribes for religious ceremonial purposes are beyond the scope of this environmental assessment. Such proposals would be addressed individually on a case-by-case basis on their own merits.

In addition, this environmental assessment focuses primarily on the potential effects of the proposed rulemaking. It does not address in detail the potential impacts associated with the specific implementation of the proposed rule. Detail such as gathering times, take limits, and permit tenure would be addressed as part of the proposed permitting process. Additional NEPA documentation would be prepared as part of the permitting process to address potential impacts to the resources and visitors of Wupatki National Monument from the taking of golden eaglets by the Hopi Tribe.

The relative importance to the Hopi of the golden eagle nesting sites in Wupatki National Monument for gathering of eaglets relative to nest sites outside the park is unknown and is not part of this analysis. However, the historical connection of the Hopi people to the ruins at Wupatki National Monument is recognized in the establishing legislation of the monument. In addition, the collection of golden eaglets by Hopi religious practitioners for ceremonies in clan-specific locations near ruins left by the Hopi is well documented.

SUMMARY OF SELECTED REGULATIONS AND POLICIES

The following sections provide a brief overview of regulations applicable to management of units of the national park system, protection of golden eagles, and Indian religious issues. Indian religious and ceremonial concerns are specifically addressed in a number of statutes and executive orders, including the American Indian Religious Freedom Act of 1978 (AIRFA), the Religious Freedom Restoration Act (RFRA), Executive Order 13007 on Sacred Sites, 1998 Executive Order on Consultation and Coordination with Indian Tribal Governments, and Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments. None of these directives provide legal authority to override existing laws such as those that govern management of the national park system. These laws and executive orders direct federal agencies within their authority to accommodate religious needs.

The National Park Service Organic Act of 1916

The Organic Act created the National Park Service and defined its purpose as follows:

“The service ...shall promote and regulate the use of federal areas known as national parks, monuments, and reservations...by such means and measures as conform to the fundamental purpose...which purpose is to conserve the scenery and the natural and historic objects and wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.” The act further authorizes the Secretary of the Interior to make “such rules and regulations as he may deem necessary or proper for the use and management of” the National Park System, and to “provide in his discretion for the destruction of such animals and of such plant life as may be detrimental to the use of” units of the National Park System.”

Management Policies: Interpreting the National Park Service Organic Act

The National Park Service Management Policies, issued December 2000 by the Director of the National Park Service, provide a detailed interpretation of the National Park Service Organic Act and related authorities. The Management Policies help NPS managers understand their legal duties in managing the national park system, and establish policies and procedures that help ensure the law is properly and consistently applied throughout the national park system. Briefly stated, the Management Policies note that impairment prohibited under the Organic Act constitutes those impacts that, in the professional judgment of the responsible National Park Service manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of these resources or values. A complete copy of the Management Policies can be found on the National Park Service Web site at www.nps.gov.

Bald and Golden Eagle Protection Act

This act prohibits taking, possession, and trade in bald and golden eagles. The act provides federal protection for bald and golden eagles; provides for civil or criminal penalties for violations and a reward for informers; authorizes cancellation of grazing, leases, licenses, permits, or other agreements for violations; and provides for possession and transport of golden eagles for falconry under certain conditions. It also authorizes the U.S. Fish and Wildlife Service to issue permits to allow the taking, possession, or transport of bald or golden eagles or their parts, nests, or eggs for authorized purposes, including use by Native American tribes for religious purposes.

American Indian Religious Freedom Act of 1978 (AIRFA)

AIRFA states:

“On and after August 11, 1978, it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to sites, use and possession of sacred objects, and the freedom of worship through ceremonials and traditional rites.”

AIRFA does not create any judicially enforceable rights; however, courts have interpreted AIRFA to require federal agencies to “...learn about, and to avoid unnecessary interference with, traditional Indian religious practices, [and to] evaluate their policies and procedures in light of the Act’s purpose, and ordinarily should consult Indian leaders before approving a project likely to affect religious practices.” Although the Supreme Court has found that federal agencies have broad discretion to conduct actions even if they adversely affect the practice of Indian religions, it at the same time encourages agencies to make reasonable accommodations for the practice of Indian religion (*Lyng v. Northwest Cemeteries* 1988).

The Religious Freedom Restoration Act (RFRA)

RFRA provides that the government may substantially burden a person’s exercise of religion only if the exercise is in furtherance of a compelling governmental interest and it is the least restrictive means of furthering that compelling governmental interest. RFRA encourages accommodation of Indian religious ceremonies and rites.

Executive Order 13007 on Sacred Sites

Executive Order 13007 directs that federal agencies: “...shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites.” The order defines sacred sites as a “specific, discrete, narrowly delineated location of federal land” identified by tribal interests as “sacred by virtue of its established religious significance to, or ceremonial use by an Indian religion.” The Departmental Manual implementing the Sacred Sites Executive Order requires agencies of the Department of the Interior to establish procedures that accommodate “access to and ceremonial use by religious Indian practitioners of Indian sacred sites” and to “consult with tribal governments and give full consideration to tribal views in its decision making process.”

Policy Concerning Distribution of Eagle Feathers for Native American Religious Practices (Memorandum for the Heads of Executive Departments and Agencies)

President Clinton’s 1994 policy statement recognizes the importance eagles occupy in many Native American religious and cultural practices and directs executive departments and agencies to “work cooperatively with tribal governments and to reexamine broadly their practices and procedures to seek opportunities to accommodate Native American religious practices to the fullest extent of the law.”

A repository for eagle feathers is located in Colorado and managed by the U.S. Fish and Wildlife Service. All eagles found dead are to be sent to the facility. Eagles, eagle parts, and eagle feathers are then distributed to Native American tribes requesting them for religious and ceremonial purposes throughout the United States.

1998 Executive Order on Consultation and Coordination with Indian Tribal Governments

This executive order states that “each agency shall, to the fullest extent practicable and permitted by law, consider any application by an Indian tribal government for a waiver of statutory or regulatory requirements.”

Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments

Section 6(b) of this executive order states that “each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in case in which the proposed waiver is consistent with the applicable federal policy objectives and is otherwise appropriate.”

RELATIONSHIP TO OTHER PLANNING PROJECTS

The National Park Service is currently preparing a Draft General Management Plan for Wupatki National Monument. The plan is intended to provide a comprehensive management direction for the monument over the next 10 to 15 years. Consultation with affiliated tribes, including the Hopi, is being conducted throughout the course of the planning process. Release of a Draft General Management Plan and Environmental Impact Statement for public review and comment is anticipated in winter of 2001.

ALTERNATIVES

The following section provides a description of the alternatives analyzed in the environmental assessment. Two alternatives are presented for consideration: Alternative A, No Action, and Alternative B, Adopt Proposed Rule.

ALTERNATIVE A – NO ACTION

Alternative A, No Action consists of the continued management and operation of Wupatki National Monument without a Final Rule for Religious Ceremonial Collection of Eaglets in Wupatki National Monument. Under this alternative the National Park Service would be unable to issue a special use permit to the Hopi Tribe to allow collection of golden eagles for religious and ceremonial purposes. Consequently, the Hopi Tribe would be unable to access the monument for this purpose. In general, this alternative would result in no discernable change from existing conditions and operations.

ALTERNATIVE B – ADOPT PROPOSED RULE

The National Park Service has developed a proposed rule (see Appendix A) to allow, under certain circumstances, the Hopi Tribe to collect golden eaglets from Wupatki National Monument for religious ceremonial purposes. Under Alternative B, the National Park Service would amend its regulations specific to Wupatki National Monument to authorize collection of golden eaglets. This activity would be subject to terms and conditions sufficient to prevent impairment of park resources, and consistent with the Bald and Golden Eagle Protection Act.

With adoption of this proposed rule, the Hopi Tribe, upon showing that the Tribe has a valid permit issued by the U.S. Fish and Wildlife to collect golden eaglets, could be granted a special use permit to collect eaglets at Wupatki by the Superintendent of Wupatki National Monument. However, before a permit could be issued, the Superintendent would conduct appropriate analyses under NEPA, the National Park Service Organic Act, and related acts to ensure that this activity would not impair park resources. Public involvement and review would also be undertaken as part of this process. Information collected during the public involvement process would then be considered in making any determination as to whether or not to issue a permit. Scientific and technical information would also be developed as part of this process. This information would likely include an evaluation of local (in-park) and regional golden eagle populations and trends; golden eagle breeding status, activity, and productivity; and available breeding habitat. The National Park Service would seek to work cooperatively with the U.S. Fish and Wildlife Service, Arizona Game and Fish Department, and the Biological Resources Division of the U.S. Geological Survey in collecting and analyzing data and assessing potential impacts to eagle populations to ensure consistency with the Bald and Golden Eagle Protection Act. The U.S. Fish and Wildlife Service and U.S. Geological Survey will be initiating a regional survey of golden eagle populations in

February 2001. Aerial surveys will be conducted in Arizona, New Mexico, Nevada, Utah, and Wyoming.

Future NEPA analyses would evaluate and disclose the potential beneficial, adverse, direct, and indirect impacts to golden eagle populations in the area from collection of golden eaglets from Wupatki National Monument and subsequent sacrifice of the fledglings. The NEPA documentation would also determine if the collection of eaglets would constitute impairment of park resources, thereby violating the National Park Service Organic Act of 1916. In addition, potential cumulative impacts would be assessed, addressing the potential incremental effects of issuing a special use permit in conjunction with other past, present, and reasonably foreseeable future actions in the region potentially affecting golden eagle populations. Other potential environmental and social effects of eaglet collection would also be analyzed and disclosed for other relevant topics, including effects on Hopi culture and traditional ways, and implications to visitor use and experience in the monument.

Mitigating measures would also be developed to minimize adverse effects of eagle collection on park resources and visitors. These measures would serve as enforceable conditions of the special use permit.

AFFECTED ENVIRONMENT

The following sections provide an overview of the environment potentially affected by the project alternatives.

IMPACT TOPICS

The following impact topics are addressed and analyzed in this environmental assessment.

- Natural resources, specifically golden eagles – the National Environmental Policy Act of 1969 requires consideration and analysis of impacts of federal actions on natural resources. Project alternatives would have impacts to golden eagles. Although not a listed species under the Endangered Species Act, golden eagles are protected under the Bald and Golden Eagle Protection Act, and receive protection in Wupatki National Monument as an element of the monument’s wildlife resources. Consequently, potential effects of the alternatives are analyzed on golden eagles.
- Cultural Resources, specifically ethnography – the National Environmental Policy Act of 1969 requires consideration and analysis of impacts of federal actions on cultural resources, including ethnography. Project alternatives have the potential to affect the ways of life and traditional practices of the Hopi Tribe. Therefore, potential effects of the alternatives on the Hopi Tribe are analyzed in this environmental assessment.
- Visitor Use – the alternatives could affect visitor use and experience in Wupatki National Monument. As a key element of the National Park Service Organic Act (...”provide for the enjoyment...”), potential effects on visitor experience are addressed in this document.
- Environmental Justice – Executive Order 12898 requires federal agencies to incorporate environmental justice in their mission by identifying and addressing any disproportionately high and adverse effects of their actions on minority and low income communities. The no action alternative could have disproportionately high adverse effects on the Hopi Tribe. The Tribe has been and continues to be constrained in its ability to pursue its traditional ways of life by not being permitted to collect golden eaglets at Wupatki National Monument. Therefore, environmental justice is addressed as an impact topic in this assessment.

A number of potential impact topics are not addressed in this environmental assessment because the alternatives described in chapter 2 - the issuance of a proposed rule allowing the Hopi tribe to collect golden eaglets from Wupatki National Monument for religious ceremonial purposes - would have no effect on these topics. These topics include all other natural and cultural resources not included in the above impact topics, including wetlands, floodplains, threatened, endangered, and special concern species, air quality,

water resources, prime and unique farmlands, vegetation, and general wildlife, archeological resources, cultural landscapes, and historic structures; transportation; and general socioeconomic environment.

NATURAL RESOURCES

General Description

Wupatki National Monument occupies approximately 56 square miles of dry, rugged land on the southwestern Colorado Plateau directly west of the Little Colorado River. The plateau has been shaped by erosion over time to reveal layers of red sandstone and white limestone. Elevations in this region (north of the Mogollon Rim) range from 2,400 above sea level at the bottom of the Grand Canyon to a high of 12,670 feet above sea level in the San Francisco Peaks.

The monument is comprised of two general vegetation types of roughly equal area:

- upland desert scrub, largely located east of the Doney Monocline, and
- juniper savannah grassland west of the monocline

Although former ranching activities, including cattle grazing, have affected vegetation communities in Wupatki, grasslands in the park remain in relatively pristine condition. Perennial water sources for wildlife are extremely scarce in the monument, with the Little Colorado River, located along the park's eastern boundary, and Peshlaki Spring comprising the only natural surface water. Other springs and seeps have been developed for park or ranching use and are not available for wildlife.

Golden Eagles

Natural History

No federally-listed threatened or endangered species are known to occur in Wupatki National Monument. However, a number of sensitive plant and animal species are known or are likely to occur in the monument, including the golden eagle. Golden eagles have utilized monument lands as both hunting and nesting habitat.

Golden eagles are large, long-lived raptors with a low reproductive output. They occur throughout much of the northern hemisphere. In North America, they occur in much of Canada and Alaska, the western U.S. and in western Mexico. They are generalist predators, preying primarily on small to medium sized mammals. They will also feed on carrion (especially young eagles) and wild and domestic sheep, young deer, caribou, antelope, and young cattle. They also take birds on the ground and in flight and snakes. They usually do not breed until they are 5 years old. Once they become adults of breeding age, they are very long-lived, with life spans of 20 years or more.

Golden eagles build stick nests on cliffs, rock outcrops, and large trees. They add a great deal of green plant material to their nests [e.g. grasses, Mormon tea (*Ephedra* spp.), juniper foliage]. They add to their nests throughout the year and nests can be very large. Nests weigh in the range of several hundred kilograms (Watson 1997).

Golden eagles usually have multiple nests within their territory and alternate among them in successive years of nesting. Beecham and Kochert (1975) reported 1-12 nests per golden eagle territory (mean of 6) in Idaho. In arid climates especially, golden eagle nests persist for many years after being abandoned. In areas where nest sites are limited, such as Wupatki National Monument, suitable nest sites have likely been occupied for centuries.

Like most birds of prey, golden eagles are territorial. Their territory is the area they defend from intrusion from other golden eagles. The home range of the golden eagle, larger than the territory, is the area they frequent to supply their daily needs. Since they are relatively large birds and require more food than most raptors, territories and home ranges are relatively large. Nearest neighbor distance (NND), the closest distance between two occupied golden eagle nests, is correlated with territory size. The minimum average NND reported for North America is 3.1 kilometers.

Nest site availability, food, or eagle territoriality may limit breeding populations of golden eagles. In some areas (e.g. the Great Plains) where there are few rock outcrops or large trees, breeding eagles are rare. In years when prey is very scarce, some pairs do not breed even though they have a suitable nest site. In areas where nest sites and food are plentiful, golden eagles' intolerance of nearby breeding pairs limits the breeding population. In the latter case, territoriality is the key limiting factor, but food availability is likely the ultimate limiting cause.

Golden eagles lay 1-3 eggs (usually 2, rarely 3). Average number of young fledged per nesting attempt is about 1 eaglet per territorial pair. Sometimes one eaglet will kill the other.

Human Impacts to Golden Eagles

Human-related sources of golden eagle mortality include shooting, collisions (with utility lines, wire fences, vehicles, etc.), electrocutions (while perching on utility lines), poisoning, and harvest. However, there is no systematic data identifying the number of eagles killed through direct human impacts in the western U.S. or four corners area. The relative importance of these factors is largely unknown.

Shooting and poisoning by ranchers have been intense in some areas of the west. Spofford (1969) states: "It is now clear that for over 20 years at least 1,000 and perhaps 2,000 golden eagles have been killed from airplanes each winter and spring in far-western Texas and southeastern New Mexico." Ranchers also have killed eagles using poisoned carrion in Colorado, Wyoming, and other western states. Unintentional poisoning (e.g. lead poisoning of eagles ingesting lead bullets or pellets while feeding on carrion) may be a significant cause of death.

Benson (1982) determined that electrocution was the cause of death for 80.6% of 416 eagle carcasses necropsied from six western states. Trauma from collisions with powerlines and wire fences may also be an important cause of mortality. Eagles feeding on road-killed carrion are killed by collision with cars and trucks.

Harvest by native Americans is another direct impact to golden eagles. Hopi Indians reported 208 golden eagles harvested from 1986-1999 in Coconino, Navajo, and Apache counties under permit by the U.S. Fish and Wildlife Service. Young eagles are more likely to be killed by these direct impacts because they are less wary and more likely to enter into hazardous situations, especially if they are very hungry.

In the northern part of their range, golden eagles are migratory. Large numbers of northern migrants (from Alaska and Canada) winter in the western U.S. Shooting, poisoning, and collisions impact both the migratory and breeding populations of the southwestern U.S. Collecting eaglets from nests only impacts the smaller breeding population of golden eagles.

Indirect impacts of human activity include habitat alteration (urbanization, overgrazing, etc.) and behavior altering disturbance. Such effects may cause otherwise suitable eagle territories or nest sites to go unused, thereby reducing population size and productivity. Another indirect impact to consider is disturbance of nesting eagles. Raptors and golden eagles in particular are considered by raptor biologists to be very sensitive to human disturbance. Support for this idea is predominantly anecdotal or based on correlative studies (e.g. where nests with eggs or eaglets have been abandoned after disturbance or where occupied nest sites have been abandoned in the face of increasing human use).

People close to nesting eagles may keep adults from their nest, causing young chicks to die from exposure. Hot sunny conditions or cold wet conditions pose the greatest threat, especially if eggs or small chicks are present. Chicks may also become weak and die if the adults do not bring food to the nest. A person entering an eagle nest with large young (eaglets 1.5 to 2 months old) may cause the eaglets to "jump." Although premature fledglings usually survive and continue to be fed by the adults, they may be injured and face increased likelihood of predation.

Severe disturbance may cause adults to abandon a nesting attempt. Severe and/or chronic disturbance may result in nest or territory abandonment. Once the disturbance is removed, eagles will probably reoccupy the territory at some point, all other relevant factors remaining the same.

Harmata (2000) has data showing that, after a nest is visited by researchers to band the young, there is less likelihood it will be reoccupied the next year. Relative to the issue of eagle gathering at Wupatki National Monument, his data would be more meaningful if he looked at territory reoccupancy as well. At Wupatki, there are approximately 7 nests in and near Citadel Sink. Harmata's data indicate that after a nest visit, the occupied nest is

less likely to be used the next year. It does not address the probability that one of the other 6 nests in this territory will be used.

There are long-running golden eagle studies where many nests have been visited annually to band young with no evident impact to territory occupancy (or other variables such as survival and productivity). Banding disturbance is not analogous to harvest disturbance because eaglets remain in the nest after banding. After harvest, eaglets may or may not remain in the nest depending upon the number of eaglets harvested.

No controlled experimental studies are known that prove the relationship between human disturbance and golden eagle nest or territory abandonment, productivity, or population level or trend. Habituation of nesting golden eagles to human disturbance is quite variable. In some areas with intense recreational activity, golden eagles have acclimated to recreational use. For example golden eagles regularly nest within 200-300 meters of a very popular boating, swimming and camping beach in Glen Canyon National Recreation Area in Arizona (Glen Canyon National Recreation Area, n.d.). In more remote areas where eagles are not habituated to humans, eagles have ceased using nest sites as recreation increased. In Yukon-Charley Rivers National Preserve in Alaska, golden eagles nested on cliffs near the Yukon River; now they mostly nest on cliffs far from the river and boaters (Skip Ambrose, 2000).

Harvest is also a direct impact to golden eagles through removing eaglet(s) from nests. Harvested eaglets may be killed or released after some period. In addition, harvest has indirect impacts. Harvest of all the eaglets in a nest will cause the adult eagles to abandon the nest during that breeding season. As a result, the adults will spend much less time in the nest vicinity for the remainder of the breeding season. The adult eagles will not resume normal breeding season activities until January or February the next year at the earliest. Collecting one eaglet from a multiple chick nest will not likely result in nest abandonment during that breeding season. Effects of harvest of all or some of the eaglets in a nest on adult eagles in subsequent breeding seasons are not known.

Nests in Wupatki National Monument

In Wupatki National Monument, suitable golden eagle nest sites are rare. There are no trees large enough to serve as nest sites for eagles in the monument. The only large rock outcrops are at Citadel and Antelope Sinks and along Antelope Wash. No occupied golden eagle nests were identified within Wupatki National Monument during surveys conducted in both 1999 and 2000. Details of these surveys are provided below.

A survey of the cliffs and suitable outcrops in Wupatki National Monument for golden eagle nest sites and nesting activity was conducted by the National Park Service in June 1999 (Britten 1999a). No occupied nests were found and one golden eagle was sighted. The Citadel Sink area in the western portion of the monument is a golden eagle nesting territory, with at least 7 probable golden eagle nests identified in this area. Four nests were recorded in Citadel Sink, and 3 nests were found 200 – 300 meters to the northeast. The Citadel Pueblo, a major visitor attraction in the park, lies above and overlooking this

nesting territory. One additional nest site was recorded near Doney Mountain just outside the southern boundary of the monument (Britten 1999a).

Based upon presence of fresh nesting material, some of these nests were likely visited by eagles in 1999, but judging from the lack of prey remains or “whitewash” (defecation), none of the nests are believed to have had breeding success in 1999 (Britten 1999a). A mated pair of eagles probably occupied the Citadel Sink territory during 1999, and may have had eggs or young chicks that were subsequently lost (Britten 1999b).

Two old nests that may have been old hawk or raven nests or very old remains of a golden eagle nest were identified just outside the eastern boundary of the monument in the Antelope Sink area.

A more comprehensive survey of Wupatki National Monument and adjacent lands for golden eagle nesting activity was conducted in 2000. Surveying activities were conducted over the entire breeding season, from the beginning of February through September (Drost 2000). In addition to the inactive nest sites identified during the 1999 survey and described above, one active nest was found during the 2000 survey. The active nest was found at the mouth of Citadel Wash just north of the monument boundary on private land. One nestling was sighted in April and successfully fledged at the end of May (Drost 2000). No active golden eagle nests were located on Wupatki National Monument land during this survey. Historic golden eagle nest sites in or near the monument, such as Citadel Sink and Doney Mountain, are believed to be alternate nest sites for the pair nesting at Citadel Wash (Drost 2000).

Most golden eagle sightings during the survey were concentrated in the Doney Cliffs area in the central part of the monument, from Doney Mountain north to Citadel Wash. Based upon observations made during the survey, a total of four golden eagles were accounted for in the survey area: the nesting pair at Citadel Wash, a single adult seen west of the Little Colorado River southeast of the monument, and a lone subadult observed over Antelope Wash in the central portion of the monument (Drost 2000).

In conclusion, based on the distribution of suitable nest sites and old golden eagle nests in Wupatki National Monument and information on golden eagle densities and Nearest Neighbor Distances in the literature, it is very unlikely more than one pair of golden eagles will nest in Wupatki National Monument in any year. It may be rarely that golden eagles successfully raise young in the monument, since the “best” nest site in the monument appears to be in the vicinity of Citadel Sink. Citadel Sink is heavily used by park visitors, and golden eagles are thought to be very sensitive to human disturbance.

CULTURAL RESOURCES

General Description

Wupatki National Monument and the surrounding area contain thousands of archeological sites, most dating from 1064 until about 1275 A.D. The monument contains an exceptionally well-preserved archeological landscape, including large residential sites, isolated field structures, ceremonial ballcourts, lithic quarries, agricultural fields, shrines, rock art, and other features (National Park Service 2000). The density of sites in this area is typically more than 40 sites per square mile, and as high as more than 100 sites per square mile. Wupatki National Monument was originally set aside to preserve and interpret several large pueblos with standing architecture: Wupatki, Wukoki, Citadel, Natakihu, Lomaki, and the two Box Canyon pueblos. Subsequent legislation added Crack-in-Rock Pueblo to the northern portion of the monument (National Park Service 2000).

The archeological sites that Wupatki National Monument was created to protect are considered to be the ancestral homes of modern-day Hopi, Zuni, and other Puebloan peoples. Certain Navajo clans also claim affiliation to the prehistoric pueblo remains. These sites preserve a tangible record of the clan migrations recorded by tribal oral traditions. Hopi shrines situated within and outside the current monument boundaries are part of a sacred landscape linking the Hopi Mesas with the San Francisco Peaks (National Park Service 2000).

Ethnography

In addition to the archeological sites and shrines, other Wupatki resources are of traditional importance to the American Indian tribes in the area. Numerous plant species were traditionally used by Hopis and Navajos, and many of these plants continue to have importance for medicinal and ceremonial purposes. The Navajo Nation has identified 32 culturally significant plant species in the monument that are in use today for medicinal, domestic, or other purposes. The Hopi Tribe has identified three plant species found in Wupatki that are in use today (National Park Service 2000).

Raptor species, including the golden eagle and red-tailed hawk, have key roles in Hopi religious ceremonies. The practice of eagle gathering is at the heart of the annual Hopi religious ceremonial cycle. The collection of eaglets from specific geographic areas is an important part of Hopi religion, and there is an ancestral and historical connection between the Hopi Tribe and Wupatki National Monument. Eaglets are gathered from nests soon after birth and raised to fledglings in Hopi villages. During summer's Niman Kachina, or Home Dance ceremony the fledgling eagles are sacrificed (smothered) and sent home to the spiritual world (Frigout 1979). Eagle feathers are subsequently used in all Hopi religious ceremonies and rituals. They are used as prayer feathers and adorn symbols of prayer in ceremonies such as the Kachina ceremony, Flute ceremony, Snake ceremony, and social dances.

VISITOR USE AND EXPERIENCE

Most visitors experience Wupatki National Monument as a “drive-through” experience, visiting the visitor center and museum exhibits and taking short walks to one or two of the pueblos. Many of the monument’s visitors are enroute to or from Grand Canyon National Park (National Park Service 2000). The monument’s major pueblos, including Wupatki, Wukoki, Lomaki, and Citadel have been developed for self-guided interpretation, with hardened surfaces to accommodate visitation. Short interpretive programs, both talks and guided walks, are offered when staffing permits. The Crack-in-Rock area and other backcountry sites are visited via ranger-led programs available 4 to 8 times per year. The remainder of the monument is closed to visitation (National Park Service 2000).

Throughout the monument, broad vistas of desert grasslands, mesas, buttes, and volcanic hills contrast sharply with the San Francisco Peaks visible in the distance. Spectacular views of the landscape within and beyond the monument are a major part of the visitor experience on the drive through Wupatki. A variety of additional recreational opportunities are available on adjacent and nearby U.S. Forest Service Land, including hiking, horseback riding, mountain biking, backpacking, four-wheel-drive excursions, and off-highway vehicle use (National Park Service 2000).

ENVIRONMENTAL JUSTICE

Ten affiliated tribes have identified traditional relationships and/or resources within the boundaries of the monument (National Park Service 2000). As previously described above, the monument’s enabling legislation emphasizes the close relationship between monument lands and the Hopi Tribe. Specific clans of the Hopi Tribe bear the important ceremonial obligation of golden eaglet gathering, and Wupatki National Monument comprises a portion of the traditional area from which these clans have traditionally gathered eaglets. However, the park is unable by regulation to allow collection of golden eaglets by the Hopi Tribe. Consequently, the National Park Service’s management of Wupatki has direct implications on traditional ways of life of the Hopi Tribe.

ENVIRONMENTAL CONSEQUENCES

METHODOLOGY

The following sections describe potential beneficial and adverse effects of the two alternatives described in the Alternatives chapter. Direct, indirect, and cumulative impacts are disclosed for natural and cultural resources and visitor use and experience. Impacts of the no action alternative are evaluated by extrapolating the effects of existing conditions into the future and assessing these effects over time. The impact of alternative B is analyzed and expressed relative to the impacts of the no action alternative.

Potential impacts are both identified and characterized in this chapter. Characterization includes a description of impact type (beneficial or adverse), intensity (severity of impact), and duration (short or long term). Impact type is defined as follows:

- beneficial impact – the impact would improve the quality or enhance the condition of the resource, visitor experience, or human population.
- adverse impact – the impact would degrade or reduce the quality of the resource, visitor experience, or human population.

Impact intensity is expressed in terms of negligible, minor, moderate, or major, with the following definitions.

- negligible - the impact is localized at the lowest levels of detection and would have no overall effect on the resource, visitor experience, or human population.
- minor – the impact is localized, slightly detectable or noticeable, and confined to a relatively small area or human population.
- moderate – the impact is clearly detectable or noticeable, and could have an appreciable impact on the resource, visitor experience, or human population.
- major – the impact would have a substantial and highly noticeable effect on the resource, visitor experience, or human population.

Impact duration is defined as follows:

- short-term impact – the effect would occur for a year or less.
- long-term impact – the effect would occur over a period of time greater than 1 year.

“Cumulative impact” is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or nonfederal) or person

undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time (40 CFR 1508.7).

ALTERNATIVE 1 – NO ACTION

Golden Eagles

Natural resources would continue to be managed as at present under the no action alternative. Because there would be no change to existing regulations, the Hopi Tribe would not be authorized nor permitted to gather golden eagles in Wupatki National Monument. Consequently, no change in the management or condition of golden eagle populations or other natural resources would occur in Wupatki National Monument.

As permitted by the U.S. Fish and Wildlife Service and the Arizona Game and Fish Department, golden eagles could continue to be taken by the Hopi Tribe from other lands outside the monument for religious ceremonial purposes. Although eagle gathering by the Hopi Tribe could be having some effect on local and/or regional golden eagle populations, the type (beneficial or adverse) and magnitude of the impact is unknown.

However, given the annual ceremonial cycle of the Hopi, and the limited number of clans participating in eagle gathering, the number of golden eagles taken from other lands is not anticipated to increase or decrease appreciably over time under this alternative. Consequently, relative to existing conditions, no adverse impacts to golden eagle populations are anticipated under the no action alternative over time.

Ethnography

As indicated above, the Hopi Tribe would be unable to obtain a special use permit to gather golden eaglets under the no action alternative, as no specific rule would exist allowing the park to issue such a permit. Consequently, clans of the Hopi Tribe requesting authorization to collect eaglets from Wupatki National Monument would continue to be unable to access the monument to engage in this religious ceremony. The affected Hopi clans would continue to experience moderate adverse impacts over the long term due to their inability to pursue their traditional ways of life on their ancestral lands in Wupatki National Monument. Performing the ceremony on ancestral lands is a key element of the Hopi religious practice.

However, under alternative 1, the Hopi eagle gathering could continue on other federal, state, or private lands. Breeding eagles are relatively scarce in Wupatki National Monument, and continuing to prohibit eagle gathering in the monument would not substantially impede the Hopi Tribe's ability to collect enough golden eaglets to meet their religious and ceremonial needs.

Visitor Experience

Implementation of the no action alternative would have no discernable impact on visitor use or visitor experience in Wupatki National Monument. Visitor access and available activities would remain much as they are today. Management of park visitation at Wupatki would continue in approximately the same manner in the future without a proposed rule to allow taking of golden eaglets by the Hopi Tribe.

Environmental Justice

Under alternative 1, the Hopi Tribe would continue to experience moderate long-term adverse impacts as a result of their inability to legally collect golden eaglets on ancestral lands in Wupatki National Monument. This ongoing effect would have a disproportionate impact on the affected clans of the Tribe because the prohibition on collecting golden eaglets in the monument specifically prevents those clans requesting authorization from engaging in ceremonies and activities that are vital to their culture and tradition. However, the Tribe can, under appropriate authorization, continue to collect eaglets from other lands under Alternative 1.

Cumulative Impacts

Regional and local golden eagle populations have been and continue to be adversely affected by a variety of human activities. As described in the Affected Environment section, sources of human-related mortality include roadkills, powerline electrocutions, collisions with powerlines and wire fences, shooting, poisoning, and ceremonial gathering. In addition, breeding habitat has been reduced as a result of ongoing urbanization. Adverse impacts to golden eagles from these and other actions are expected to continue in the future, resulting in moderate long-term effects to golden eagle populations. However, because the no action alternative is not anticipated to have adverse impacts to golden eagles over time, it would not contribute incrementally to the adverse effects of the above actions. Consequently no cumulative impacts are anticipated.

There would be no cumulative impacts to visitor use under alternative 1. The no action alternative would have no discernable effect on visitor use, therefore not contributing incrementally to the effects of other actions.

Past actions by the federal and state governments, such as the establishment of Wupatki, as well as other land management designations, agency jurisdictions, and regulations have constrained or placed conditions on the ability of the Hopi Tribe to collect golden eaglets for ceremonial purposes. Continuing loss of breeding habitat from urbanization as well as human-related eagle mortality would likely further reduce golden eagle populations, resulting in moderate adverse effects on the Hopi's ability to gather eaglets from lands outside the monument. The above adverse effects to eagle populations, in conjunction with the adverse effects of Alternative 1 in perpetuating the Hopi's inability to collect golden eagles from their ancestral lands in Wupatki National Monument, would result in moderate long-term adverse cumulative impacts to the Hopi Tribe. Cumulative

impacts are anticipated to be moderate because the Hopi Tribe would likely still be able to collect eaglets from public lands outside the monument, despite the potential for declining eagle populations in the region. Habitat loss from urbanization would likely be somewhat less on public lands relative to private lands.

ALTERNATIVE 2 – ADOPTION OF PROPOSED RULE

Golden Eagles

Under alternative 2, the National Park Service would have the authority under the proposed rule to issue a special use permit upon request of the Hopi Tribe to gather golden eaglets in Wupatki National Monument. Should the permit be granted and the taking of eaglets occur, there would be a removal and direct loss of golden eaglets in Wupatki National Monument. Adverse impacts to the local (monument) population of golden eagles would occur, with the severity of impact dependant upon the number of eaglets taken and other permit conditions. There is also potential for adverse impacts to the regional golden eagle population should more eaglets be collected than at present in the region. In addition to direct mortality and removal from the monument, the adult eagles would abandon a nest site for the remainder of the breeding season if all eaglets in the nest are collected. There is potential for the adult golden eagles to abandon the nest site and territory the subsequent breeding season or seasons as well if all eaglets in the nest are harvested. If there are two eaglets in the nest and only one is collected, abandonment of the nest or territory is unlikely (Britten 2000).

The proposed rule specifically states that gathering of eaglets by the Hopis must occur under terms and conditions sufficient to protect park resources from impairment. As a result, the special use permit would include terms and conditions such as gathering times, take limits, and permit tenure that would be sufficient to protect park resources from impairment. Alternative 2 includes the commitment to prepare additional NEPA analysis and documentation as part of Wupatki's special use permitting process. The potential direct, indirect, and cumulative impacts of issuing a permit to the Hopi Tribe would be evaluated and disclosed to other agencies, organizations, and the public in the environmental assessment or environmental impact statement. In addition, the Tribe would be required to present to Wupatki National Monument staff at time of permit application a valid permit issued by the U.S. Fish and Wildlife Service to collect golden eaglets under the Bald and Golden Eagle Protection Act. Given the stipulations requiring that special use permits protect park resources from impairment and the commitment to prepare accompanying NEPA analysis, negligible long-term adverse impacts are anticipated to golden eagle populations under Alternative 2.

Ethnography

Under Alternative 2, moderate to major beneficial impacts could occur to those clans of the Hopi Tribe requesting authorization to gather eaglets in the monument, depending on the nesting activity and success and hence, availability of golden eaglets in Wupatki National Monument. These factors would be considered as part of the terms and conditions associated with issuing a special use permit. Clans would then be able to

pursue related religious ceremonies on their ancestral lands, a key component of traditional Hopi cultural practice. These beneficial effects would likely be long-term, regardless of subsequent permit renewals or authorizations, due to the important place such ceremonies have in the culture of the relevant clans.

Visitor Experience

Adoption of the proposed rule by the National Park Service could result in moderate adverse impacts to those visitors who observe the collection of golden eaglets. Although the potential that eagle gathering would be observed by visitors is remote, such visitors may feel their experience has been diminished by this interaction of humans with native wildlife. However, there could also be beneficial impacts to those visitors who find interest in and value the experience of observing Hopi traditional activities and ceremonies.

The National Park Service would evaluate steps to minimize contact between visitors and those authorized individuals of the Hopi Tribe gathering eaglets in the monument. These provisions would not only serve to protect the privacy and sanctity of the Hopi religious ceremony, but also minimize the potential for visitor conflicts. Such steps, depending on their nature, would be considered and their impacts analyzed as part of the special use permitting and associated NEPA process.

The collection of eaglets could also reduce the opportunity for visitors to observe golden eagles while visiting the monument. If the only eaglet in a nest is collected, the adults would likely leave the nest area. The young typically spend weeks after fledging near the nest, and because they are more tolerant of people than adult eagles, are likely to be seen by visitors (Britten 2000). Loss of this opportunity would have a minor adverse impact on visitor experience over the long term. Impacts would be minor due to the interpretive and educational focus of the monument on its cultural resources, as well as the limited potential at present for viewing golden eagles in the monument.

Environmental Justice

Implementation of alternative 2 (authorization of the proposed rule) is not expected to result in tangible adverse impacts to the Hopi Tribe regarding environmental justice. Moderate to major beneficial impacts to the Hopi Tribe are anticipated under the preferred alternative compared to alternative 1 as a result of the ability of the participating clans to now access ancestral lands to engage in traditional religious practices.

Cumulative Impacts

As described under Cumulative Impacts for Alternative 1, moderate long-term adverse impacts to regional and local golden eagles populations are anticipated to continue in the future as a result of human-related activities. These impacts include direct mortality (from roadkills, powerline electrocutions, collisions with fences and powerlines,

shooting, and poisoning), as well as loss or degradation of breeding habitat as a result of continuing urbanization. Adoption of the proposed rule under Alternative 2 would contribute incrementally to the above adverse effects should a permit be granted for the taking of golden eaglets by the Hopi Tribe. As described under Alternative 2 above, long-term adverse impacts would occur to local and possibly regional golden eagle populations, including displacement, direct loss of eaglets, and disturbance of nest sites and territories during eagle gathering activities. The intensity or magnitude of these impacts would depend upon the number of eaglets taken and other permit conditions. Overall, the adverse impacts of past, present, and reasonably foreseeable future human activities, in conjunction with the incremental adverse impacts of Alternative 2, would likely result in moderate adverse cumulative impacts to regional golden eagle populations. Impacts are anticipated to be moderate because of the limited breeding habitat occurring in Wupatki National Monument. Given the limited breeding habitat in the monument, the number of golden eagles that could be collected there would also be limited. Therefore, the incremental adverse effect of Alternative 2 would be a relatively small component of the total cumulative effect on golden eagle populations.

As described above under Cumulative Impacts under Alternative 1, past actions by the federal and state governments, such as the establishment of Wupatki, as well as other land management designations, agency jurisdictions, and regulations have constrained or placed conditions on the ability of the Hopi Tribe to collect golden eaglets for ceremonial purposes. Continuing loss of breeding habitat from urbanization as well as human-related eagle mortality would likely further reduce golden eagle populations, resulting in moderate adverse effects on the Hopi's ability to gather eaglets from lands outside the monument. However, implementation of Alternative 2 would have moderate to major beneficial impacts to those clans of the Hopi Tribe requesting authorization to gather eaglets in the monument, depending on the nesting activity and success and hence, availability of golden eaglets in Wupatki National Monument. The above adverse effects to eagle populations, in conjunction with the beneficial effects of Alternative 2 on the Hopi's ability to collect golden eagles from their ancestral lands in Wupatki National Monument, would result in moderate beneficial cumulative impacts to those clans of the Hopi Tribe requesting authorization to gather eaglets in the monument. Cumulative impacts are anticipated to be moderate and beneficial because despite ongoing adverse impacts to regional golden eagle populations, implementation of alternative 2 would facilitate the gathering of golden eaglets on Hopi ancestral lands that have been unavailable to the Tribe since the establishment of Wupatki National Monument.

There are no known past, present, or reasonably foreseeable future actions that would contribute to potential impacts of Alternative 2 on visitors observing the collection of golden eaglets. Consequently, cumulative impacts to visitor experience under Alternative 2 would be limited to effects on the opportunity for visitors to observe golden eagles. As described above, adverse impacts to local and regional golden eagle populations from human activities (i.e., electrocutions, poisoning, urbanization), including direct loss, displacement, and habitat loss and degradation would continue to adversely affect the potential for visitors to observe golden eagles in Wupatki National Monument. The collection of eaglets under Alternative 2 could further reduce the opportunity for visitors

to observe golden eagles while visiting the monument. Together, adverse effects to golden eagle populations from other past, present, and reasonably foreseeable future actions, in combination with eaglet collection under Alternative 2 would have a minor adverse impact on visitor experience over the long term due to the reduced opportunity for visitors to observe golden eagles in the monument. Impacts would be minor due to the interpretive and educational focus of the monument on its cultural resources, as well as the limited potential at present for viewing golden eagles in the monument.

As described in the proposed rule (Appendix A), it is possible in the future that the National Park Service could receive requests from other Native American tribes or other groups to collect resources from Wupatki National Monument or other units of the national park system. The National Park Service has the authority under 36 CFR section 2.5 to issue permits for collection of resources for research purposes, and a superintendent is allowed to “designate certain fruits, berries, nuts, or unoccupied seashells for personal use or consumption” if the gathering or consumption will not adversely affect park wildlife, plant species, or park resources. Superintendents have exercised discretion to permit collection of park resources for ceremonial purposes on a local level as a form of personal consumption governed by 36 CFR 2.1(c). Factors affecting this discretion include the nature and purpose of the collection request, the specific resources affected, enabling legislation of the park unit, and potential for adversely affecting park resources.

Potential cumulative impacts to the resources and visitors of Wupatki National Monument associated directly with the implementation of alternative 2 (and issuance of a special use permit) would be specifically addressed as part of the NEPA analysis and documentation conducted in conjunction with the special use permitting process to ensure no impairment of park resources. The analysis would include an evaluation of the potential cumulative effects on golden eagle populations, taking into account other past, present, and reasonably foreseeable future actions affecting golden eagles in the park and region. Cumulative effects of eaglet collection on other relevant impact topics such as visitor use and experience and impacts on the Hopi would also be considered.

CONSULTATION AND COORDINATION

The Department of the Interior has consulted with Hopi tribal officials throughout the preparation of the proposed rule for allowing collection of golden eaglets in Wupatki National Monument. A government-to-government meeting of National Park Service and Hopi tribal officials was held December 14, 2000 in Phoenix to discuss this document, the proposed rule, and possible implications of its implementation should it become final.

The National Park Service has also consulted with the U.S. Fish and Wildlife Service regarding the proposal and its relationship to the Bald and Golden Eagle Protection Act. The U.S. Fish and Wildlife Service has been issuing permits to the Hopi for collection of golden eaglets and other raptors since 1986 in Apache, Navajo, and Coconino counties in northeastern Arizona.

This environmental assessment will be made available to interested agencies, organizations, and the general public for 60 days for review and comment, with notice published in the Federal Register. At the end of the public comment period, the National Park Service will evaluate the input received and revise the proposed rule and accompanying environmental assessment accordingly. Should the National Park Service conclude that the final rule would not have the potential for significant impact to the human environment, a Finding of No Significant Impact (FONSI) would be prepared and authorized by the Intermountain Regional Director. The final rule and FONSI would be published in the Federal Register. If the final rule is determined to have the potential for significant impact to the human environment, the National Park Service would issue a Notice of Intent (NOI) to prepare an environmental impact statement on the proposal.

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APPENDIX

SPECIAL REGULATIONS; AREAS OF THE NATIONAL PARK SYSTEM; RELIGIOUS CEREMONIAL COLLECTION OF GOLDEN EAGLETS FROM WUPATKI NATIONAL MONUMENT

4310-70-U

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7.101

RIN 1024-AC86

SPECIAL REGULATIONS; AREAS OF THE NATIONAL PARK SYSTEM; RELIGIOUS CEREMONIAL COLLECTION OF GOLDEN EAGLETS FROM WUPATKI NATIONAL MONUMENT

AGENCY: National Park Service, Interior

ACTION: Proposed Rule

SUMMARY: The National Park Service (NPS) has preliminarily determined that under certain circumstances it is appropriate to allow the Hopi Tribe to collect golden eaglets within Wupatki National Monument, a unit of the National Park System, for religious ceremonial purposes. This rule would authorize this activity upon terms and conditions sufficient to protect park resources against impairment, and consistent with the Bald and Golden Eagle Protection Act.

DATES: Written comments will be accepted by mail, fax, or electronic mail through [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: Comments should be addressed to: Kym Hall, National Park Service, 1849 C Street, N.W., Room 7413, Washington, DC 20240. Fax: (202) 208-6756. Email: WASO_Regulations@nps.gov.

FOR FURTHER INFORMATION CONTACT: Sam Henderson, Superintendent, Wupatki National Monument, 6400 N. Highway 89, Flagstaff, Arizona 86004. Telephone: (520) 526-1157. Fax: (520) 526-4259. Email: WUPA_superintendent@nps.gov or Dr. Patricia Parker, Chief, American Indian Liaison Office, National Park Service, 1849 C Street, N.W., Room 3410, Washington, DC 20240. Telephone: (202) 208-5475. Fax: (202) 208-0870. Email: Pat_Parker@nps.gov

SUPPLEMENTARY INFORMATION

Existing Regulations

A subsection of NPS regulations, promulgated in 1983, prohibits possessing, destroying, injuring, defacing, removing, digging, or disturbing from its natural state living or dead wildlife or fish, plants, paleontological specimens, or mineral resources, or the parts or products of any of these items, except as otherwise provided. 36 C.F.R. 2.1(a).

Another provision of these regulations authorizes NPS to issue permits allowing the collection of national park system resources for research upon certain conditions. 36 C.F.R. 2.5(b). No such permit may be issued except to:

an official representative of a reputable scientific or educational institution or a State or Federal agency for the purpose of research, baseline inventories, monitoring, impact analysis, group study, or museum display when the superintendent determines that the collection is necessary to the stated scientific or resource management goals of the institution or agency and that all applicable Federal and State permits have been acquired, and that the intended use of the specimens and their final disposal is in accordance with applicable law and Federal administrative policies.

In addition, a permit may not be issued if removal of the specimen would result in damage to other natural or cultural resources, affect adversely environmental or scenic values, or if the specimen is readily available outside of the park area.

Subsection 2.5(c) prohibits issuing a permit to take a specimen that is listed as an endangered or threatened species under state or federal law unless the specimen cannot be obtained outside of the park area and the primary purpose of the collection is to enhance the protection or management of the species. Subsection 2.5(f) prohibits issuing a research collection permit in park areas where the enabling legislation prohibits the killing of wildlife.

NPS regulations allow a park superintendent to designate certain fruits, berries, nuts or unoccupied seashells which may be gathered by hand for personal use or consumption if the gathering or consumption will not adversely affect park wildlife, or otherwise adversely affect the plant species, or park resources. 36 C.F.R. 2.1(c)(1). Another subsection addresses the ceremonial use of NPS resources, stating that the regulations shall not be construed as authorizing the taking, use or possession of fish, wildlife or plants for ceremonial or religious purposes, except where specifically authorized by Federal

statutory law, treaty rights, or in accordance with 2.2 [wildlife protection] or 2.3 [fishing]. 36 C.F.R.

2.1(d). The preamble to this rulemaking explained that the provision was added in response to comments that had questioned the applicability of the regulation in such circumstances, and went on to say:

The Service recognizes the American Indian Religious Freedom Act directs the exercise of discretion to accommodate Native religious practice consistent with statutory management obligations. The Service intends to provide reasonable access to, and use of, park lands and park resources by Native Americans for religious and traditional activities. However, the National Park Service is limited by law and regulations from authorizing the consumptive use of park resources. (48 FR 30,252 (1983)).

The Need to Revise the Regulations

In 1999, members of the Hopi Tribe requested permission from the NPS to take golden eaglets from Wupatki National Monument for religious purposes. Citing the National Park Service Organic Act and 36 C.F.R. 2.1, 2.2, and 2.5, the NPS denied the Hopi request. The Assistant Secretary for Fish and Wildlife and Parks then withdrew the NPS denial in order to reconsider the issue. Upon advice of the Solicitor, as explained below, the proposal is being made to change the regulation to allow favorable action on the Hopi request.

The practice of eagle gathering is at the heart of the Hopi religious ceremonial cycle and the Hopi culture. The eagle serves as the link between the spiritual world and the physical world of the Hopi, a connection that embodies the very essence of Hopi spirituality and belief. Golden eaglets are gathered from nests soon after birth and are kept and raised to fledglings in Hopi villages. Later, during the Niman Kachina ceremony, the golden eagles are sacrificed and "sent" to their spiritual home. The eagles' feathers are subsequently used in all Hopi religious ceremonies such as the Kachina, Flute, and Snake ceremonies. The cyclical relationship between the eagle and the Hopi is renewed annually through the practice of eaglet gathering, sustaining the connection between the spiritual and physical worlds for the next generation of Hopi.

The importance that the Hopi attach to the ceremonial gathering of eagles is expressed in Article IV of the Tribal Constitution approved by Secretary of the Interior Ickes on December 19, 1936:

The Tribal Council shall negotiate with the United States Government agencies concerned, and with other tribes and other persons concerned, in order to secure

protection of the right of the Hopi Tribe to hunt for eagles in its traditional territories, and to secure adequate protection for its outlying, established shrines.

Only a few of the Hopi clan and religious societies bear the important ceremonial obligation of eagle gathering, and each of these has a traditional area from which it – and no other clan or society that is not related to it – may gather eagles. Hopi clan ownership of traditional eagle nests is well documented in the anthropological literature. "The nests of eagles near village ruins are owned by the descendants of clans which once lived in their neighborhood." Jesse Walter Fewkes, *Property Rights in Eagles Among the Hopi*, 2 American Anthropologist (n.s.), 690-707, 693 (1900). "The territory around the Hopi villages where eagles may be found is, and has been from time immemorial, divided into portions or allotments, which are controlled by certain clans or families. These territories extend as far as 50 and 60 miles from the villages." H.R. Voth, *Notes on the Eagle Cult of the Hopi*, collected in H.R. Voth, *Brief Miscellaneous Hopi Papers*, Field Columbian Museum, Publication 157, 107-109, Anthropological Series 11(2)(1912). Clan ownership of eagle nesting areas corresponds to the early settlement areas and migration routes of the clans before they arrived at their modern villages. The Hopi regard the eagles as embodying the spirits of their ancestors, and the clan areas often contain, or are very close to, Hopi clan ruins.

Anthropologists have described the "famous nest at Wupatki" as an important area for traditional eagle gathering by the Hopi. Florence H. Ellis, *The Hopi: Their History and Use of Lands* (n.d.) 149-154, collected in Hopi Indians (1974). Wupatki National Monument was set aside by President Coolidge in 1924 under the authority of the Antiquities Act, 16 U.S.C. 431-33. The Proclamation is silent on eagle gathering. It identified the purpose of the monument in language common to the time; that is, to reserve and protect prehistoric ruins built by the ancestors of a most picturesque tribe of Indians still surviving in the United States, the Hopi or People of Peace. Proc. No. 1721 (43 Stat. 1977).

Legal Considerations

The National Park Organic Act created the NPS and defined its purpose in relevant part as follows:

The service . . . shall promote and regulate the use of the Federal areas known as national parks, monuments and reservations . . . by such means and measures as conform to the fundamental purpose . . . which purpose is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. 16 U.S.C. 1.

The 1916 Act further authorizes the Secretary of the Interior to make such rules and regulations as he may deem necessary or proper for the use and management of the National Park System, and to provide in his discretion for the destruction of such animals and of such plant life as may be detrimental to the use of units of the National Park System. 16 U.S.C. 3.

In 1978, section 1 of the Organic Act was amended to include these provisions:

Congress declares . . . [that the] National Park System [shall be] preserved and managed for the benefit and inspiration of all the people of the United States . . . [and] directs that the promotion and regulation of the various areas of the National Park System . . . shall be consistent with and founded in the purpose established by Section 1 . . . to the common benefit of all the people of the United States. The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established except as may have been or shall be directly and specifically provided by Congress. 16 U.S.C. 1a-1.

With some exceptions, the NPS has generally prohibited consumptive uses of National Park System resources except as specifically authorized by Congress. Applicable regulations generally prohibit hunting of wildlife, and prohibit removal of plants, paleontological, archeological, cultural or mineral resources, but allow recreational fishing and the collection of fruits, nuts, and berries for personal consumption. See 36 C.F.R. §§ 2.1(a); 2.1(c); 2.2 and 2.3.

Constitutional Considerations and Statutes, Court Decisions, and Executive Orders that Address Indian Religious Ceremonial Concerns

The following discussion explains why we believe applicable laws and policies allow the NPS to accommodate the Hopi's religious ceremonial interest in collecting golden eaglets (*Aquila chrysaetos*) at Wupatki National Monument to the extent it will not result in impairment of the resources protected by the National Park Service Organic Act.

Constitutional considerations. The leading judicial guidance on the intersection between management of federal non-Indian lands and Indian religious practices is Lyng v. Northwest Indian Cemetery Protective Ass'n, 485 U.S. 439 (1988). The Supreme Court there made clear that the First Amendment's free exercise clause permits curtailing Indian religious practices on federal lands in appropriate circumstances. See also U.S. v. Hugs, 109 F.3d 1375 (9th Cir. 1997) (permit requirement of

Bald and Golden Eagle Protection Act does not violate free exercise clause when applied to Native American religious practices, even though it imposed a substantial burden on the practice of Native American religions in which eagles and eagle parts play a central role, because it was the least restrictive means of serving the compelling governmental interest of protecting eagles, while permitting access to eagles and eagle parts for religious purposes); Regulation of Hardrock Mining (Solicitor's Opinion M # 36999, Dec. 27, 1999) (Constitution does not compel rejection of the proposed mining plan on BLM-managed public land even though it would seriously and irreparably degrade a cultural resource of importance to a nearby Indian Tribe). The Constitution does not, in other words, require the National Park Service to accommodate uses, by Indians or others, of national park system resources for religious ceremonial purposes. The Supreme Court also said in Lyng, however, that the Government's rights to the use of its own land . . . need not and should not discourage it from accommodating [Indian] religious practices . . . 485 U.S. at 454. See also Solicitor's Opinion M # 36999, at 5. Such accommodations may be undertaken in appropriate cases without raising questions under the establishment clause of the First Amendment. See Bear Lodge Multiple Use Assoc. v. Babbitt, 175 F.3d 814 (10th Cir. 1999), cert. denied, 2000 WL 305849 (March 27, 2000) (upholding Park Service's encouragement of a voluntary month-long no-climb period at Devil's Tower National Monument in order to accommodate Indian religious practices); Office of Legal Counsel, Department of Justice, Memorandum to the Secretary of the Interior - Permissible Accommodation of Sacred Sites, September 18, 1996, p. 1 (federal government has broad latitude to accommodate the use of sacred sites by federally recognized Indian tribes without violating the establishment clause).

Such accommodations may appropriately provide preferences for Indian tribes and their members. Such preferences have unique and deep roots in American law, and may be upheld when similar practices involving others might not pass muster. See, e.g., Morton v. Mancari, 417 U.S. 535 (1974) (Bureau of Indian Affairs hiring preference for Indians upheld because policy was based on political relationship between Tribes and Federal Government); Rupert v. Director, U.S. Fish & Wildlife Service, 857 F. 2d 32 (1st. Cir. 1992) (upholding exemption from criminal prosecution for possession of eagle feathers by members of federally recognized tribes); Peyote Way Church of God v. Thornburgh, 922 F.2d 1210, 1217 (5th Cir. 1991) (upholding statutory exemption from laws prohibiting peyote possession for Native

American Church members, the court noting that the federal-tribal relationship precludes the degree of separation between church and state ordinarily required by the First Amendment); United States v. Gibson, 2000 WL 117987 (11th Cir. Aug. 21, 2000) (limitation of religious use exemption under Bald and Golden Eagle Protection Act to Indians who were members of federally recognized tribes did not violate non-tribal members' constitutional or statutory free exercise rights).

The Religious Freedom Restoration Act (RFRA). RFRA, enacted in 1993, 42 U.S.C. 2000bb *et. seq.*, provides that the government may substantially burden a person's exercise of religion only if the exercise is in furtherance of a compelling governmental interest and it is the least restrictive means of furthering that compelling governmental interest.¹ There is a reasonable argument that the NPS regulations prohibiting collection of golden eaglets in Wupatki National Monument may substantially burden the Hopis' exercise of religion, to the extent that collection of these resources may be regarded as a necessary element in the Hopis' religious ceremony. Whether the prohibition could be sustained under RFRA would depend on whether there is a compelling governmental interest at stake, and whether the prohibition is the least restrictive means of furthering it. Since the NPS is charged with the conservation of wildlife under its Organic Act, 16 U.S.C. 1, it is understood that the NPS has a compelling governmental interest in the absolute bar on the take of wildlife for all purposes except scientific research. There is a question however if this prohibition is the least restrictive means to further that interest. The question becomes more difficult given the Hopi religion's necessity of taking a golden eaglet from a specific location of historical and religious importance, in this instance, Wupatki National Monument. Prohibiting this religious exercise may amount to a substantial burden on their religion. Cf. Callahan v. Woods, 736 F.2d 1269, 1272 (9th Cir. 1984) (If the compelling state goal can be accomplished despite the exemption of a particular individual, then a regulation which denies an exemption is not the least restrictive means of furthering the state interest.) We do not have to reach these questions here, however, if the NPS has the authority to, and has decided to accommodate, the Hopi Tribe's religious ceremonial collection of golden eaglets at Wupatki National Monument. Plainly the RFRA encourages, and does not prohibit, such accommodation.

¹ The Supreme Court has held that RFRA is unconstitutional as applied to state governments, City of Boerne v. Flores, 521 U.S. 507, 117 S.Ct. 2157 (1997), but the question here is the impact of RFRA on the federal government.

The American Indian Religious Freedom Act (AIRFA). This Act, enacted in 1978, declares the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express and exercise the[ir] traditional religions . . . including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites. 42 U.S.C. 1996. The second section of AIRFA, not codified in the U.S. Code, requires the President to direct the various federal agencies responsible for administering relevant laws to evaluate their policies and procedures in consultation with native traditional religious leaders in order to determine appropriate changes necessary to protect and preserve Native American religious cultural rights and practices, and directed the President to report to Congress with twelve months of enactment the results of the evaluation. 92 Stat. 469.

The Secretary of the Interior convened a task force of federal agencies, which issued the report called for by Congress. American Indian Religious Freedom Act Report (Federal Agencies Task Force, August 1979). The Task Force discussed, among other things, the problem of restricting the gathering of indigenous natural substances from federal lands for use in Indian religious ceremonies and practices, noting in particular that the gathering of a specific plant or animal may be forbidden or limited by conservation statutes. Id. at 51- 53. It recommended that each agency accommodate Native American religious practices to the fullest extent possible under existing statutes, and also that agencies revise existing regulations, policies and practices to provide for separate consideration of any Native American religious concerns . . . Id. at 62-63. The report also recommended that agencies provide exemptions from restrictions on access to and gathering, use and possession of federal property for Native American religious purposes similar to those provided for scientific purposes. Id. at 63.

AIRFA does not create any judicially enforceable rights. Lyng v. Northwest Indian Cemetery Protective Ass'n, 485 U.S. 439, 455, 471 (1988). Courts have, however, construed AIRFA to require federal agencies to:

learn about, and to avoid unnecessary interference with, traditional Indian religious practices, [and to] evaluate their policies and procedures in light of the Act's purpose, and ordinarily should consult Indian leaders before approving a project likely to affect religious practices. AIRFA does

not, however, declare the protection of Indian religions to be an overriding federal policy, or grant Indian religious practitioners a veto on agency action.

Wilson v. Block, 708 F.2d 735, 746 (D.C. Cir. 1983) cert. denied, 464 U.S. 956 (1983). Thus AIRFA requires federal agencies to consider, but not necessarily to defer to, Indian religious values. Id. at 747. See also Havasupai Tribe v. U.S., 752 F. Supp. 1471, 1488 (D. Ariz. 1990), aff'd 943 F.2d 32 (9th Cir. 1991), cert. denied, 503 U.S. 959 (1992); cf. Lyng, supra, 485 U.S. at 454.

Executive Orders and other Policy Statements. A 1994 policy statement, and Executive Orders issued in 1996 and 1998, have all promoted government accommodation of Indian religious practices within the limits of agency discretion. President Clinton's Policy Concerning Distribution of Eagle Feathers for Native American Religious Purposes (1994) recognizes the important place eagles occupy in many Native American religious and cultural practices and directs executive departments and agencies to work cooperatively with tribal governments and to reexamine broadly their practices and procedures to seek opportunities to accommodate Native American religious practices to the fullest extent under the law. 59 FR 22,953 (Apr. 29, 1994).

President Clinton's 1996 Executive Order on Sacred Sites directs that federal agencies:

shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites.

Executive Order 13,007, Section 1, 61 FR 26,771 (1996). The Order defines "sacred site" as a specific, discrete, narrowly delineated location of Federal land identified by tribal interests as sacred by virtue of its established religious significance to, or ceremonial use by an Indian religion. Id. 1(b)(iii). While the Order does not reach directly to the collection of plants or wildlife on federal land for Indian religious purposes, it is suggestive of accommodation where possible. The Departmental Manual implementing the Sacred Sites Executive Order requires Interior agencies to establish procedures that accommodate access to and ceremonial use by religious Indian practitioners of Indian sacred sites and to consult with tribal governments and give full consideration to tribal views in its decision making process. 512 DM 3.4(1)(b); 3.7 (1998).

President Clinton's 1998 Executive Order on Consultation and Coordination with Indian Tribal Governments states in pertinent part that "each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribal government for a waiver of statutory or regulatory requirements." No. 13,084, 63 Fed. Reg. 27,655 (May 14, 1998). Recently, President Clinton reaffirmed the United States' commitment to consultation with Indian tribal governments and issued Executive Order 13175 (November 6, 2000) which details the process agencies must follow to ensure meaningful and timely input from tribal officials in the development of regulations or policies that have tribal implications.

None of these executive directives purport to (nor could they) provide legal authority to override existing laws such as those that govern management of the national park system. To the extent permitted by law, however, they direct federal agencies to accommodate uniquely Indian needs.

General discussion and conclusion. In light of the statutes, court decisions, executive orders and other legal considerations discussed above, we believe the NPS has a reasonable legal basis for promulgating a regulation that allows the Hopi Tribe to collect golden eaglets at Wupatki National Monument for religious ceremonial purposes. The collection of golden eaglets from specific geographic areas is an important part of the Hopi religion, and there is an ancestral and historical connection between the Hopi Tribe and Wupatki National Monument. The proposed regulation would allow the NPS to include terms and conditions, including gathering times, take limits, and permit tenure, that are sufficient to protect the park resources against impairment, and would require compliance with the Bald and Golden Eagle Protection Act.

The proposed regulation, and the accompanying environmental assessment, applies only to this narrow situation. It is possible that the NPS will receive requests from other tribes for similar rule changes to address their religious practices. Such requests will be addressed on their merits. Any further rule change must follow notice and comment and other procedures required by applicable law. The current proposal is to deal strictly and exclusively with the Hopi Tribe's proposal to collect golden eaglets at Wupatki National Monument.

PUBLIC PARTICIPATION: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the National Park Service, Ranger Activities Division, Suite

7408, 1849 C. St., N.W., Room 7413, Washington, D.C. 20240. You may also comment via the Internet to WASO_Regulations@nps.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please include "RIN 1024-AC86" in your subject line and your name and return address in the body of your message. Finally, you may hand-deliver comments to Kym Hall, National Park Service, 1849 C. St., N.W., Room 7413, Washington, D.C. 20240. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

DRAFTING INFORMATION: The principal author of this proposed interpretive rule is John Leshy, Solicitor, Department of the Interior.

COMPLIANCE WITH OTHER LAWS

Regulatory Planning and Review (E.O. 12866).

In accordance with the criteria in Executive Order 12866, OMB has determined the rule not to be significant.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule does not interfere with actions taken or planned by another agency. The Hopi must obtain a permit from the Fish and Wildlife Service before being allowed to collect golden eaglets.

However, this rule does not at all affect the standards, times or necessary elements for obtaining that

permit. This rule only addresses the ability of the Hopi to collect golden eaglets from Wupatki National Monument after they have received the necessary permit from FWS.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or monetary loan programs or the rights or obligations of their recipients.

(4) This proposed rule may be controversial because it proposes to allow a new collection of wildlife, but it proposes to do so only in very extremely limited circumstances, for a single or very few specimens of a single species of non-endangered wildlife in a single unit of the National Park System for a very narrowly defined purpose by a single entity, and only then when it is determined by the U.S. Fish & Wildlife Service and the National Park Service to be consistent with the laws protecting wildlife and with the laws preventing impairment of natural resources in the National Park System, respectively.

Regulatory Flexibility Act.

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.). The economic effects of this rule are local in nature and negligible in scope.

Small Business Regulatory Enforcement Fairness Act (SBREFA).

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule will have no effect on small or large businesses. It addresses only the Hopi Tribe's religious ceremonial collection of golden eaglets at Wupatki National Monument and involves no small businesses. This rule:

1. Does not have an annual effect on the economy of \$100 million or more.
2. Does not represent a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
3. Does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act.

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. The Department has determined that this rule meets the applicable standards provided in Section 3(a) and 3(b)(2) of Executive Order 12988.

Takings (E.O. 12630).

In accordance with Executive Order 12630, the rule does not have significant takings implications. No property acquisition or impacts on private property owners are expected due to the administrative nature of the rule. The rule addresses only Hopi collection of golden eaglets from Wupatki National Monument, and no private property rights are involved or affected.

Federalism (E.O. 13132).

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This regulation will not have a substantial direct effect on the states, or on the distribution of power and responsibilities among the various levels of government. The rule addresses only the collection of golden eaglets from Wupatki National Monument, a unit of the national park system, and such activity does not require state activity.

Civil Justice Reform (E.O. 12988).

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The preamble clearly explains that the rule creates a special exception to 36 C.F.R. 2.1(d) which allows the Hopi to collect golden eaglets from Wupatki National Monument for religious ceremonial purposes subject to conditions sufficient to prevent impairment.

Paperwork Reduction Act.

This rule does not require an information collection from 10 or more parties. It does not require submissions under the Paperwork Reduction Act or OMB form 83-I.

National Environmental Policy Act.

This rule does not constitute a major federal action significantly affecting the quality of the human environment. A draft Environmental Assessment has been completed. Copies of that assessment may be obtained through one of several methods.

--Internet: <http://www.nps.gov/wupa/>

--By email: wupa_superintendent@nps.gov

--By mail: Superintendent, Wupatki National Monument, 6400 N. Highway 89, Flagstaff, Arizona 86004.

Public comments regarding the Environmental Assessment may be submitted to Kym Hall, National Park Service, 1849 C Street, N.W., Room 7413, Washington, D.C. 20240, by email to WASO_regulations@nps.gov, or by fax at (202) 208-6756. Public comments will be accepted through March 19, 2001.

Government-to-Government Relationship with Tribes.

In accordance with the Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249) and 512 DM 2, we have identified potential effects on the Hopi Indian Tribe. The proposed regulation, and the accompanying environmental analysis, applies only to this narrow situation. It is possible that the NPS will receive requests from other tribes for similar rule changes to address their religious practices. Such requests will be addressed on their merits. Any further rule change must follow notice and comment and other procedures required by applicable law. The current proposal is to deal strictly and exclusively with the Hopi Tribe's proposal to collect golden eaglets at Wupatki National Monument. We have consulted with the Hopi Tribe regarding the proposed rule. We will further consider their comments, and the comments of all interested parties, that are received during the comment period.

Clarity of this regulation.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical

language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A “section” appears in body type and is preceded by the symbol “§” and a numbered heading; for example, **§ 7.101 Wupatki National Monument**. (5) Is the description of the rule in the “Supplementary Information” section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also email the comments to this address: Exsec@ios.doi.gov.

List of Subject in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements

Accordingly, Part 7 of 36 CFR is amended as set forth below:

PARK 7 -- SPECIAL REGULATIONS; AREAS OF THE NATIONAL PARK SYSTEM

1. The table of contents is amended to read as follows:

Sec.

* * * * *

7.101 Wupatki National Monument

2. The authority for Part 7 is amended to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q) 462(k).

Sec. 7.96 also issued under D.C. Code 8-137 (1981); D.C. Code 40-721 (1981).

Sec. 7.101 also issued under 42 U.S.C. 2000bb; 42 U.S.C 1996; Executive Orders No. 13084, 13007, 13175.

Add § 7.101 to read as follows:

§ 7.101 Wupatki National Monument.

- (a) **Collection of Golden Eaglets from Wupatki National Monument by Hopi Tribe.** Upon terms and conditions sufficient to prevent impairment to park resources, and upon a showing that the Tribe has a valid permit to collect golden eaglets under the Bald and Golden Eagle Act, 16 U.S.C. 668-668d, the

Superintendent of Wupatki National Monument shall grant a permit to the Hopi Tribe to collect golden eaglets from Wupatki National Monument for religious ceremonial purposes.

(b) **[Reserved]**.

Assistant Secretary
Fish and Wildlife and Parks

Date